IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 638 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

J.I. GANDHI SILK MILLS P.LTD.

Versus

UNION OF INDIA

Appearance:

1. Special Civil Application No. 638 of 2004
MR NITIN K MEHTA for Petitioner No. 1-2
MS DHARMISHTA RAVAL for Respondent No. 1-4

CORAM : HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE A.M.KAPADIA

Date of decision: 16/04/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE M.S.SHAH)

Rule. Ms Dharmishta Raval, learned senior standing counsel for the Central Government waives service of Rule for the respondents.

2. The Commissioner of Central Excise, Surat, passed an Order-in-Original on 29.11.1999 requiring the petitioner Company to pay Central Excise duty of Rs.86,92,118/- with penalty of like amount and also penalty on the Directors of the Company.

In the appeals preferred before the CEGAT, by order dated 7.6.2000 the Tribunal required the petitioner Company to make pre-deposit of Rs.60,00,000/= towards duty and also deposit of Rs.5,00,000/= towards penalty.

It is not necessary to refer to the subsequent applications made before the Settlement Commission because the matter went back to the Tribunal.

Ultimately the Tribunal dismissed the appeals on 25.3.2003 on the ground that pre-deposit order was not complied with.

After the order dated 25.3.2003, the petitioners approached the Tribunal with Misc. Applications to modify the orders and to reduce the amount/s directed to be deposited. The Tribunal dismissed those applications and on 30.4.2003 the Tribunal passed an order directing that if the pre-deposits are not made prior to 29.5.2003, the appeals shall be dismissed. The time limit to deposit the amount was extended from time to time and ultimately on 18.8.2003 the Tribunal rejected the applications of the petitioners for extension of time and dismissed the appeals.

Hence, this petition under Article 226 of the Constitution.

3. Since the petitions arise from the dismissal of appeals for non-compliance with the pre-deposit orders, the learned counsel for the parties have not been permitted to argue the matter on merits. However, there was some ambiguity about the amounts which the petitioners are required to deposit pursuant to the pre-deposit order of the Tribunal.

It appears that during the course of investigation an amount of Rs.20,79,859/= was deposited by the petitioners. However, the department's contention is that the amount of Rs.60,00,000/= to be deposited towards duty does not include the said amount of Rs.20,79,859/-, whereas Mr Mihir Joshi for the petitioners submits that the said amount is already included.

4. Pursuant to this Court's order dated 10.2.2004, Ms. D.N. Raval, learned Senior Standing Counsel for Central Government has, apart from relying on the affidavits in reply, also produced a statement giving particulars of the amounts deposited.

5. Mr. Joshi, learned counsel for the petitioners, states that over and above the amount indicated in the said statement, the petitioner Company has also deposited a further sum of Rs.6,61,500/-

Mr Joshi also submits that the petitioner Company does face financial difficulties which have been pointed out by the petitioner Company even before the Tribunal when it moved the Miscellaneous Applications. Therefore, for making such payment as may be ordered by the Court, the petitioner Company would require some time and that the petitioner Company would make such payment in equal monthly instalments of Rs.1,00,000/= each.

6. It appears to us that the ends of justice would be met if we require the petitioner Company to make a deposit of 75% of the duty amount, that is, 75% of Rs.86,92,118/- plus an amount of Rs.5,00,000/- towards penalty.

7. In view of the above, we dispose of this petition in terms of the following directions :-

(i) The orders passed by the Tribunal dismissing the petitioners' appeals No. E/S/ay-249 to 279/2000 Mum. and E/280 to 310/2000-Mum. (Annexure "A' to the petition page No.12) are set aside and the appeals shall be restored on the file of the Tribunal and the previous orders passed by the Tribunal regarding pre-deposit to be made by petitioner No.1 Company shall stand substituted by the following order :-

"Over and above the pre-deposit of Rs.5,00,000/- towards penalty, the petitioners shall make pre-deposit of 75% of the duty amount, that is, 75% of the amount of Rs.86,92,118/- with the respondents (including the amounts already deposited by the petitioners with the respondents), by paying balance outstanding amount so as to make it 75% of the duty amount by monthly instalments of Rs.1,00,000/- each. On such deposits, there shall be waiver of rest of the duty

and penalty."

(ii) This order shall become operative after the petitioners file an undertaking before this Court that the aforesaid direction shall be complied with and after the petitioners handover to the respondents, within two weeks from today, post-dated cheques of the amounts so as to complete the pre-deposit of 75% of the duty amount, that is, 75% of the amount of Rs.86,92,118/- and deposit of Rs.5 lakhs towards penalty.

(iii) After the amounts as aforesaid are pre-deposited, the Tribunal shall hear the appeals on merits.

(iv) Subject to compliance with the above conditions, the respondents shall not make recovery on the basis of the order in original dt.29.11.1999.

In case of failure on the part of the petitioners to comply with any of the above conditions and in case of dishonour of any of the post-dated cheques, this order shall become inoperative.

8. The petition is accordingly disposed of in terms of the aforesaid directions.

Rule is made absolute to the aforesaid extent and subject to the aforesaid conditions with no order as to costs.

(M.S. Shah, J.)

(A.M. Kapadia, J.)

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